

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

GREAT NORTHERN INSURANCE CO.  
As subrogee of Juan A. Rodriguez Vila and  
Iwalani Rodriguez

CIVIL NO. 11-1303 (DRD)

Plaintiff

Vs.

EL LEGADO PROPERTY MANAGEMENT  
COMPANY, INC.; EL LEGADO DE CHI CHI  
RODRIGUEZ GOLF RESORT, INC.;  
EL LEGADO DE CHI CHI RODRIGUEZ  
GOLF RESORT, (SC) SE; EL LEGADO  
HOMEOWNER'S ASSOCIATION, INC, and  
EL LEGADO CONDOMINIUM, REGIME I

Re: NEGLIGENCE, BREACH OF  
CONTRACT, & BREACH  
OF WARRANTY

Codefendants

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**MOTION TO SET ASIDE DEFAULT  
AT DOCKET 28; AND ORDER AT DOCKET 48**

TO THE HONORABLE COURT:

COMES NOW REAL LEGACY ASSURANCE COMPANY, INC, through the undersigned counsel and without submitting to this Honorable Court's jurisdiction, respectfully sets forth and prays:

1. Plaintiff filed a Motion for default against the El Legado Property Management Company, Inc., El Legado de Chi Chi Rodriguez Golf Resort, SC SE, and El Legado de Chi Chi Rodriguez Golf Resort, Inc., which was granted by the Clerk of this Honorable Court. (See Docket No. 28).

2. On 1/18/2012 plaintiff filed a motion for default judgment against the aforementioned named defendants. Its motion for default judgment is based upon the allegations

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of the first complaint filed in the case, in which Real Legacy was not named as defendant. (See Docket No. 37).

3. On 1/18/2012, plaintiff filed an amended complaint, including Real Legacy in its allegations, as presumably liable for the negligence of the named defendant entities. (See Docket No. 42).

4. On 1/23/2012 this Honorable Court entered order at Docket 48, holding in abeyance for thirty days plaintiff's motion for default judgment (Docket 37), "in light of Real Legacy's concerns regarding coverage". And instructed the parties to further clarify the coverage issue within that period of time.

5. On 1/31/2012 Real Legacy filed a motion to dismiss for lack of insurance coverage pursuant to Fed. R. Civ. P. 12(b)(6), enclosing a certified true copy of the insurance policy issued by Real Legacy, including the Declarations contained in the policy, in addition to an affidavit duly subscribed by Ms. Glorianna Alvarez Vicente, Commercial Lines Underwriter for Real Legacy, which states that there is no coverage as to any of the named defendants in the case at bar, neither for the allegations thereby. (See Docket No. 49). Plaintiff filed a motion for relief under Fed. R. Civ. P. 56(b). (See Docket No. 54).

6. At the time plaintiff filed its motion for default (Docket No. 27), Real Legacy was not a named defendant in the instant case, nor had any knowledge or control over any of the aforementioned named defendants. Should this Honorable Court grant plaintiff's motion for default judgment, it would definitely constitute an unfair burden for Real Legacy to defend its rights, in case this Honorable Court finds that there is coverage as to any of them.

WHEREFORE, it is respectfully requested from this Honorable Court, to deny plaintiff's

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motion for default judgment at Docket No. 37, set aside the order entered at Docket No. 48, and set aside the default entered at Docket No. 28.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 20<sup>th</sup> day of March, 2012.

*S/Ernesto R. Irizarry*

**ERNESTO R. IRIZARRY**

USDC-PR No. 126702

Attorney for

REAL LEGACY ASSURANCE COMPANY, INC.

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date a true and exact copy of the foregoing has been filed electronically with the Clerk of the Court via CM/ECF system which will send notification of such filing via e-mail to all the attorneys of record.

*S/Ernesto R. Irizarry*

**ERNESTO R. IRIZARRY**

